

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

ARKANSAS RIVERVIEW
DEVELOPMENT, LLC

PLAINTIFF

v.

No. 4:06CV00817 JLH

CITY OF LITTLE ROCK and
CAPITOL CITY HOTEL
LIMITED PARTNERSHIP

DEFENDANTS/
COUNTER-CLAIMANT/
THIRD-PARTY PLAINTIFF

v.

ARKANSAS BAR FOUNDATION and
METROPOLITAN NATIONAL BANK

THIRD-PARTY DEFENDANTS

ORDER

Arkansas Riverview Development, LLC, and the City of Little Rock have filed cross motions to enforce the settlement that was reached in the settlement conference conducted by Magistrate Judge J. Thomas Ray on March 7 and March 8, 2007.

At the conclusion of the conference on March 7, 2007, Judge Ray recited into the record the terms of a settlement agreement between Arkansas Riverview Development, LLC, Metropolitan National Bank, and Capitol City Hotel Limited Partnership. The settlement agreement, as recited by Judge Ray, provided that the settlement would be executed on Tuesday, March 13, 2007, and that, after consummating the settlement on that day, counsel for Capitol City Hotel Limited Partnership would present to the undersigned judge an order pursuant to which Capitol City Hotel Limited Partnership would dismiss, with prejudice, all claims that it had asserted against Arkansas Riverview Development, the Arkansas Bar Foundation, and Metropolitan National Bank; and Arkansas Riverview Development would dismiss, with prejudice, all claims that it had asserted against Capitol

City Hotel Limited Partnership. Counsel for Arkansas Riverview Development have informed the Court that the settlement with Capitol City Hotel Limited Partnership was closed pursuant to the settlement agreement. However, to date, the parties have not delivered to the Court the precedent for an order of dismissal, approved by counsel for all the parties, as required by the settlement agreement reached on March 7, 2007.

At the conclusion of the settlement conference on March 8, 2007, Judge Ray recited into the record the terms of a settlement agreement that had been reached between Arkansas Riverview Development and the City of Little Rock. The settlement agreement provided that the City would use its best efforts to place the approval of the settlement agreement on the agenda for the meeting of the City of Little Rock Board of Directors scheduled for March 20, 2007, but in no event would the settlement agreement be presented to the City of Little Rock Board of Directors later than April 4, 2007.¹ The settlement agreement provided, *inter alia*, that Arkansas Riverview Development and the City of Little Rock would execute mutual releases pursuant to which they would release “any and all claims of whatsoever kind or nature that they have asserted against each other or that they could have asserted against each other as part of this lawsuit.”

On May 10, 2007, Arkansas Riverview Development filed a motion to enforce the settlement in which it asserted that the City had been dilatory in preparing to close the settlement. However, it appeared from reading the motion that Arkansas Riverview Development was not prepared to close because the survey and legal descriptions had not yet been completed. The City Attorney, Thomas M. Carpenter, responded by letter dated May 12, 2007, assuring the Court that the City was moving

¹ The parties agree that the settlement was approved by the Board of Directors of the City of Little Rock on April 3, 2007.

expeditiously in order to be prepared to close when Arkansas Riverview Development was in a position to close. Mr. Carpenter noted that a new subdivision had to be created before the settlement could be closed, and that the creation of that subdivision required that Arkansas Riverview Development provide a survey, which it had not done.

On May 25, 2007, Arkansas Riverview Development filed a request for a hearing on the motion to enforce settlement. That motion recited that by June 7 all related necessary City of Little Rock regulatory approval should be completed, and then the parties should be able to close the settlement. Mr. Carpenter responded by letter dated May 30, 2007, stating that the City would be prepared to close on June 8, 2007, assuming that the subdivision was approved on June 7, 2007.

On June 6, 2007, Gregory M. Hopkins wrote Mr. Carpenter on behalf of Arkansas Riverview Development asserting a claim for damages at the approximate rate of \$2,000 per day for breach of the settlement agreement for failing to close in a timely fashion. On June 7, 2007, the City filed a motion asking the Court to maintain jurisdiction and to conduct a hearing to enforce the settlement. The Court entered an order maintaining jurisdiction and setting a hearing for June 13, 2007.

On June 13, 2007, all parties appeared and announced that they were prepared to close the settlement agreement. The undersigned recited the facts as he understood them from the moving papers and correspondence. The parties agreed that the undersigned's recitation of facts was accurate, except that the undersigned stated that the legal description and subdivision plat had been delivered to the City on June 7, 2007, but Arkansas Riverview Development's lawyer, in candor, informed the Court that those documents had been delivered to the City after June 7. All parties agreed that the settlement agreement could be closed within twenty-four hours. All parties agreed

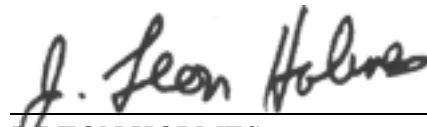
that a precedent for an order of dismissal with prejudice dismissing all claims by all parties could be submitted to the Court within forty-eight hours.

The Court ORDERS that Arkansas Riverview Development and the City of Little Rock close the settlement agreement by NOON on JUNE 14, 2007, as they have announced that they are ready to do. That settlement agreement will include the following language, unless the parties mutually agree to alternate language: “Arkansas Riverview Development, LLC, and the City of Little Rock hereby release each other of and from any and all claims of whatsoever kind or nature that they have asserted against each other or that they could have asserted against each other as part of the case styled *Arkansas Riverview Development, LLC v. City of Little Rock, et al.*, Case No. 4:06CV00817 JLH/JTR, in the United States District Court for the Eastern District of Arkansas.”

The Court hereby ORDERS that the attorneys of record deliver to the Court by NOON on JUNE 15, 2007, a precedent for an order of dismissal with prejudice, approved by all counsel, dismissing all claims by all parties.

Arkansas Riverview Development, LLC’s motion to enforce settlement agreement is denied as moot. Document #124. The City of Little Rock’s motion to enforce settlement agreement is denied as moot. Document #127.

IT IS SO ORDERED this 13th day of June, 2007.



J. LEON HOLMES
UNITED STATES DISTRICT JUDGE